

Commission on the Accountability and Review of Federal Agencies (CARFA): A Brief Overview of Legislative Proposals

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Summary

In the 109th Congress, nearly identical bills have been introduced (S. 1155/H.R. 2470) that, if enacted, would establish a 12-member Commission on the Accountability and Review of Federal Agencies (CARFA). Subsequently, a modified version of the legislation was introduced (S. 3521, in Title IV, Subtitle B) that would establish a 15-member Commission on Congressional Budgetary Accountability and Review of Federal Agencies. In addition, a bill providing for one or more Federal Review Commissions was introduced (H.R. 5766) that contains provisions that are both similar to and different from the CARFA legislation in several respects. On July 20, 2006, the House Committee on Government Reform marked up and ordered H.R. 5766 to be reported with an amendment, along with H.R. 3282, a bill that would provide for the automatic termination of agencies unless reauthorized by Congress. The House was to take up these two bills on July 27, 2006, but the House leadership postponed floor action. Under each version of the proposed CARFA-related legislation, in a two-party political system, the majority of commission members would be appointed by members of the same political party as the sitting President. Each version would require the commission to review most or all executive agencies and programs to determine if any are “duplicative,” “wasteful,” “inefficient,” “outdated,” “irrelevant,” or “failed.” The commission would be required (or in some cases allowed) to recommend that any such programs and agencies be “realigned” or eliminated. The commission’s recommendations would be packaged into a bill that would receive expedited congressional consideration (e.g., could not be amended or filibustered). Potential issues of congressional interest include the commission’s membership; the scope of the commission’s review and recommendations; definitions of key terms; standards and criteria for decision making, including the proposal’s relationship to the Bush Administration’s Program Assessment Rating Tool (PART); expedited congressional consideration; and transparency and participation. This report will be updated.

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Legislative History and Developments

In the 109th Congress, for the third consecutive Congress, companion bills have been introduced (S. 1155, sponsored by Senator Sam Brownback, and H.R. 2470, sponsored by Representative Todd Tiahrt, both introduced in May 2005) that, if enacted, would establish a 12-member Commission on the Accountability and Review of Federal Agencies (CARFA). Although the two bills are nearly identical to each other, they differ from one another in some key respects, as discussed elsewhere.¹ After their introduction and referral to committees, neither S. 1155 nor H.R. 2470 has received further action.²

Similar provisions and references to the proposed CARFA legislation have also appeared elsewhere. Nearly identical provisions to those in S. 1155/H.R. 2470 appeared in a budget process reform bill (H.R. 2290) and a bill to offset costs from Hurricane Katrina and Hurricane Rita (S. 1928). In addition, nonbinding provisions in the FY2006 budget resolution (H.Con.Res. 95) called for enacting a CARFA-like commission.

President George W. Bush said in his FY2006 budget that he would propose, as part of his President's Management Agenda (PMA),³ legislation authorizing him to propose "results commissions," which would consider and revise Administration proposals to restructure and consolidate programs and agencies. Proposals approved by such a results commission and the President would be considered by Congress under expedited procedures. The Administration suggested that the results commissions legislation would be similar to the CARFA proposal. In July 2005, bills were introduced (H.R. 3276/S. 1399) that largely incorporated the Administration's draft language, which had been released in June 2005. Many aspects of the results commissions proposals appear to resemble presidential reorganization authority under 5 U.S.C. §§ 901-912, which expired in 1984.⁴ In a subcommittee hearing on H.R. 3276, Office of Management and Budget (OMB) Deputy Director for Management Clay Johnson III testified that the draft results commission legislation was proposed, instead of reorganization authority, because the Administration judged there was "zero chance of [reorganization authority] ever being approved" by Congress.⁵ Provisions in S. 1399 also provided for a "sunset commission,"⁶

¹ The differences between the bills are discussed extensively in CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass. In the 107th and 108th Congresses, the Senate and House bills were identical companion bills (S. 2488/H.R. 5090 and S. 1668/H.R. 3213, respectively) and introduced by the same sponsors.

² In the 108th Congress, however, the Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, held a hearing in May 2004 on almost identical legislation (S. 1668). See U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Trimming the Fat: Examining Duplicative and Outdated Federal Programs and Functions*, hearing, 108th Cong., 2nd sess., May 6, 2004, S.Hrg. 108-672 (Washington: GPO, 2004).

³ For an overview of the PMA, see CRS Report RS21416, *The President's Management Agenda: A Brief Introduction*, by Virginia A. McMurtry.

⁴ For discussion of the expired presidential reorganization authority and its evolution, see CRS Report RL30876, *The President's Reorganization Authority: Review and Analysis*, by Ronald C. Moe; and CRS Report RL30795, *General Management Laws: A Compendium*, entry for "Reorganization Act of 1977, as Amended" in section IV.B. of the report, by Henry B. Hogue.

⁵ U.S. Congress, House Committee on Government Reform, Subcommittee on the Federal Workforce and Agency Organization, *It's Time to REACT—Reauthorizing Executive Authority to Consolidate Task: Establishing Results and Sunset Commissions*, hearing on H.R. 3276 and H.R. 3277, 109th Cong., 1st sess., Sept. 27, 2005, H.Hrg. 109-111 (Washington: GPO, 2006), p. 46.

⁶ The concept of a "sunset" is that programs and agencies would terminate automatically on a periodic basis unless reauthorized by law. Reauthorization would require passage by both chambers and, if the President vetoed the

in addition to results commissions. Other than a House Committee on Government Reform subcommittee hearing on H.R. 3276 in September 2005,⁷ none of the bills cited above received further action after referrals to committees.

A modified version of the CARFA legislation was included in an omnibus budget process reform bill that was introduced on June 15, 2006 (S. 3521, in Title IV, Subtitle B). The legislation would establish a 15-member Commission on Congressional Budgetary Accountability and Review of Federal Agencies (CCBARFA). These provisions in S. 3521 differ from the initially introduced versions of CARFA (S. 1155/H.R. 2470) in some key respects, including membership of the commission and tasks for the President. Also, H.R. 2470 would exempt Department of Defense (DOD) programs and components from a CARFA commission's review, whereas S. 3521 (and S. 1155) would not exempt DOD. On July 14, 2006, S. 3521 was reported by the Senate Committee on the Budget with an amendment in the nature of a substitute.⁸

In June 2006, provisions related to CARFA (H.R. 2470) and a sunset commission (provisions from two sunset commission-related bills, H.R. 3277 and H.R. 3282) were reportedly being negotiated to develop a consensus bill under the coordination of House Majority Leader John Boehner for inclusion in a measure that was expected to go to the House floor in early July.⁹ Subsequently, a bill providing for one or more Federal Review Commissions was introduced (H.R. 5766) on July 12, 2006. After a hearing by the House Committee on Government Reform on July 19, 2006, the committee marked up and ordered to be reported H.R. 5766 with an amendment in the nature of a substitute on July 20, 2006 (specifying additional duties for a Federal Review Commission to consider various aspects of agency regulations). In addition, H.R. 3282 was ordered to be reported.¹⁰ According to a press account, the House of Representatives would take up H.R. 5766 along with H.R. 3282 on July 27, 2006.¹¹ House leadership postponed floor action on both bills, however, reportedly in the face of opposition from Democrats, Republican moderates, and some Republican appropriators.¹²

reauthorization, an override of the veto, which would require a two thirds majority in each chamber of those present and voting. In addition to S. 1399, other bills from the 109th Cong. (H.R. 3277 and H.R. 3282) would establish a sunset commission. For discussion of how the sunset concept relates to proposals to establish a sunset commission, see CRS Report RL34551, *A Federal Sunset Commission: Review of Proposals and Actions*, by Virginia A. McMurtry; and CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass.

⁷ See U.S. Congress, House Committee on Government Reform, Subcommittee on the Federal Workforce and Agency Organization, *It's Time to REACT—Reauthorizing Executive Authority to Consolidate Task: Establishing Results and Sunset Commissions*. For discussion, see also CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass.

⁸ U.S. Congress, Senate Committee on the Budget, *The Stop Over Spending Act of 2006*, report to accompany S. 3521, 109th Cong., 2nd sess., S.Rept. 109-283 (Washington: GPO, 2006).

⁹ Ralph Lindeman, "Sunset Bills Pending in House, Senate Borrow Procedures Used in Base Closings," *BNA Daily Report for Executives*, June 16, 2006; and Ralph Lindeman, "Sunset Legislation in House May Wait Until After July 4th Recess, House Aide Says," *BNA Daily Report for Executives*, June 20, 2006; both available (with subscription) at <http://www.bna.com>.

¹⁰ For discussion, see CRS Report RL34551, *A Federal Sunset Commission: Review of Proposals and Actions*, by Virginia A. McMurtry.

¹¹ Ralph Lindeman, "Sunset Bills Move Through Committee With Floor Vote in House Set for July 27," *BNA Daily Report for Executives*, July 21, 2006; available (with subscription) at <http://www.bna.com>. For a comparison of the two measures, see CRS Report RL33569, *Sunset and Program Review Commission Bills in the 109th Congress: Comparing H.R. 3282 and H.R. 5766*, by Virginia A. McMurtry.

¹² Steven T. Dennis, "Sun May be Setting on Tiahrt and Brady Sunset Bills," *CQ Today*, July 27, 2006, available at <http://www.cq.com>.

Brief Analysis and Overview of Legislative Provisions

Although some commentators have referred to the CARFA-related legislation as providing for a “sunset” commission, the CARFA-related provisions do not use the sunset concept of automatic termination of agencies and programs on a periodic basis unless the agencies or programs are reauthorized by law. Instead, the CARFA-related proposals would establish a commission that, in turn, would develop legislation, to be considered by Congress under expedited procedures, that provides for the “realignment” or elimination of agencies and programs that the commission decides fit certain criteria. The legislation’s proponents have seen this mechanism as being analogous to the base realignment and closure (BRAC) process that has been used for military installations. However, there are a number of significant differences between the BRAC process and CARFA proposals, as discussed elsewhere.¹³

If S. 3521 or either of the initially introduced versions of the CARFA legislation (i.e., S. 1155/H.R. 2470) were enacted, the majority of commission members would, in a two-party political system, be appointed by members of the same political party as the sitting President (9 out of 15 under S. 3521; 8 out of 12 under S. 1155; and all 12 under H.R. 2470).¹⁴ Each of the three versions of CARFA would require the commission to (1) review most or all executive agencies and programs,¹⁵ according to listed but sometimes undefined criteria; and (2) submit to Congress a plan (or, for S. 3521, four plans over four years) with recommendations to “realign” or eliminate agencies and programs, along with proposed legislation to implement the plan(s). Each version of the proposed CARFA legislation would require the commission to determine if any agencies or programs are “duplicative,” “wasteful,” “inefficient,” “outdated,” “irrelevant,” or “failed.” The commission would be required (or in some cases allowed) to recommend that any such programs and agencies be realigned or eliminated. None of the bills defines “realign.” In addition, each of these three versions of CARFA-related legislation would require “systematic assessment of programs” by the President, using language that appears to be modeled upon the George W. Bush Administration’s Program Assessment Rating Tool (PART) without specifically requiring the PART’s use,¹⁶ and require the commission to consider the President’s assessments when evaluating programs. Also, in all the bills, the commission’s proposed legislation would receive expedited congressional consideration, thereby prohibiting amendments in either chamber and filibusters in the Senate.

Proponents of different versions of CARFA have often compared the proposal to the BRAC commissions that focused on military installations,¹⁷ except that the proposed CARFA legislation

¹³ See CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass.

¹⁴ However, individuals with appointing authority under the legislation could choose members of another, or no, political party for these commission member positions.

¹⁵ The different versions of CARFA would provide alternative scopes of review for a CARFA commission. S. 1155 and S. 3521 would include within the commission’s scope of review all “Executive agenc[ies],” as defined in 5 U.S.C. § 105, and, in addition, would explicitly include the Executive Office of the President (EOP). It is noteworthy that the definition of “Executive agency” under 5 U.S.C. § 105 also includes the Government Accountability Office (GAO), a legislative branch agency. GAO would also, therefore, be within the commission’s scope of review. By contrast, H.R. 2470 would include all executive agencies, as defined in 5 U.S.C. § 105, but would exclude the Department of Defense and “any agency that solely administers entitlement programs.” H.R. 2470 would not include the EOP.

¹⁶ For discussion of the PART, see CRS Report RL32663, *The Bush Administration’s Program Assessment Rating Tool (PART)*, by Clinton T. Brass; and CRS Report RL33301, *Congress and Program Evaluation: An Overview of Randomized Controlled Trials (RCTs) and Related Issues*, by Clinton T. Brass, Erin D. Williams, and Blas Nuñez-Neto.

¹⁷ For background, see CRS Report 97-305, *Military Base Closures: A Historical Review from 1988 to 1995*, by David

would focus on most or all agencies and programs of the rest of the executive branch of government. Proponents have also argued that the mechanism would eliminate ineffective or outdated programs,¹⁸ address “out of control” spending, and move “toward balancing the budget.”¹⁹ Critics of different versions of CARFA have argued the proposal would give too much power to the President and, in a two-party political system, to the political party of the sitting President to reorganize, eliminate, or cut government agencies and programs outside the regular legislative process while prohibiting amendments and Senate filibusters. Critics argue that this would allow large policy and organizational changes to take place with simple majorities in both chambers and signature of the President.²⁰

There are several similarities and differences between the CARFA-related proposals and H.R. 5766 (as ordered to be reported with an amendment in the nature of a substitute by the House Committee on Government Reform), some of which are discussed here. Whereas the CARFA proposals would create a single commission, H.R. 5766 would authorize the establishment of one or more Federal Review Commissions, without limitation as to number, by executive order from the President or enactment of a joint resolution by Congress. In this way, H.R. 5766 resembles the Administration’s proposal for “results commissions” and provisions in H.R. 3276/S. 1399, discussed earlier. The membership of a Federal Review Commission would be appointed by the President, with four of seven members appointed “in consultation with” congressional leaders. If these consultations resulted in the President appointing the commission member recommended by a congressional leader, then, as with the CARFA proposals, in a two-party political system, the majority of each Federal Review Commission’s membership would be appointed, in effect, by members of the same political party as the sitting President.

Another difference between H.R. 5766 and the CARFA proposals is that H.R. 5766 does not provide for how a Federal Review Commission’s legislative proposal “to reorganize, consolidate, abolish, expand, or transfer the Federal programs and agencies reviewed by the Commission” would be considered in the Senate. This section was left blank, apparently in anticipation of Senate consideration and amendment of H.R. 5766.

Other differences between the CARFA proposals and the proposed authority to establish Federal Review Commissions include: in H.R. 5766, a duty for the President to “submit to Congress a schedule under which Federal Review Commissions shall be established to review all Federal agencies and programs,” which has no analog in the CARFA proposals; in H.R. 5766, different and less detailed criteria for a commission’s recommendations; in H.R. 5766, explicit reference to a duty to consider an agency’s “existing rules promulgated by the agencies to carry out the programs”; and, in H.R. 5766, absence of language that appears to call for use of the Administration’s PART.

Under H.R. 5766, the scope of review of a Federal Review Commission includes “all Federal agencies.” According to the bill’s definition of “agency” in the proposed Section 1001(k), the

E. Lockwood and George H. Siehl; and CRS Report RS22291, *Military Base Closures: Highlights of the 2005 BRAC Commission Report and Its Additional Proposed Legislation*, by Daniel H. Else and David E. Lockwood.

¹⁸ U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Trimming the Fat: Examining Duplicative and Outdated Federal Programs and Functions*, p. 29.

¹⁹ See remarks of Sen. Sam Brownback as transcribed in “Senate Republicans Hold News Conference on the Budget Process,” June 14, 2006, available at <http://www.cq.com>.

²⁰ See James Horney, *Sunset Commission Proposals Would Not Provide “Good Government,”* Center on Budget and Policy Priorities, June 16, 2006, available at <http://www.cbpp.org/6-16-06bud.htm>.

scope of review would be the definition of agency that was operative under presidential reorganization authority (5 U.S.C. § 902(1)), which expired in 1984. As noted earlier, the CARFA

proposals would provide for differing scopes within the executive branch, using the definition provided at 5 U.S.C. § 105 as the base definition, which also includes the Government Accountability Office (GAO).

For more extensive analysis of CARFA-related proposals, see CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass.

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